

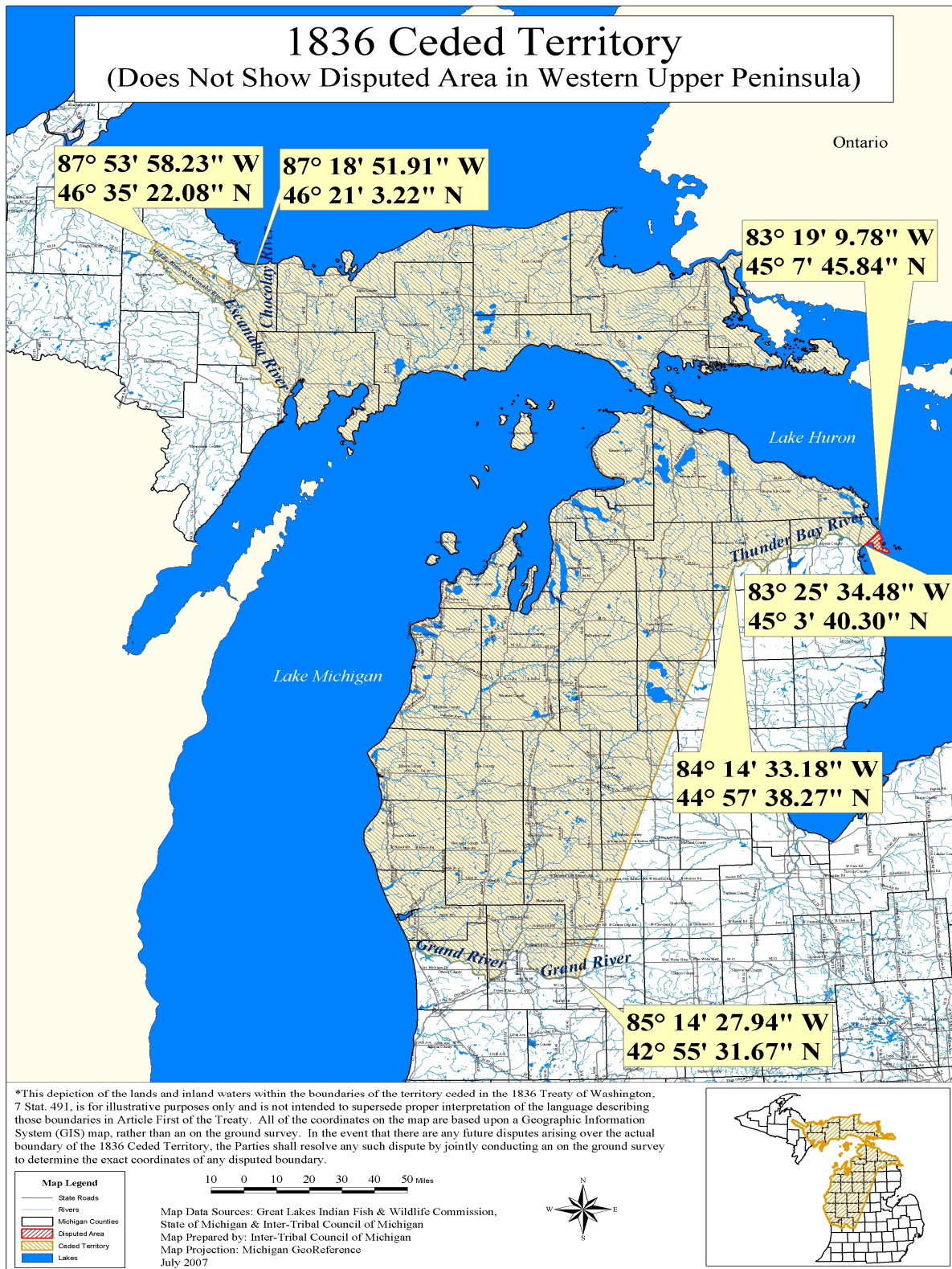
29.2 Issues concerning the applicability of particular federal laws or regulations to the Tribes' Inland Article 13 Rights shall be determined in accordance with prevailing law governing the applicability of federal law to Indian treaty rights. The Parties do not intend this Decree to limit or expand the application of federal law, including but not limited to the Endangered Species Act, to Indian treaty rights as determined under prevailing law.

Dated: _____

RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT
JUDGE

Appendix A

LANDS AND INLAND WATERS WITHIN THE BOUNDARIES OF THE TERRITORY
CEDED IN THE 1836 TREATY



Appendix B1

PROTOCOL FOR THE TRIBES' AUTHORIZATION OF THEIR MEMBERS' USE OF SPECIALLY REGULATED FISHING METHODS AND FOR MANAGEMENT OF TRIBAL AND STATE WALLEYE FISHERIES IN WALLEYE LAKE SYSTEMS

This Protocol is adopted in accordance with Section XII of the Decree. The provisions of this Protocol are intended to facilitate implementation of Section XII of the Decree but shall not relieve any party of any obligation it has under the Decree. In the event of any inconsistency between the provisions of the Decree and the provisions of this Protocol, the provisions of the Decree shall be controlling. Except as authorized by this Protocol or otherwise authorized in the Decree or by mutual agreement of the Tribes and the State, the Tribes shall prohibit their members from using Specially Regulated Fishing Methods in Walleye Lake Systems. However, notwithstanding any other provision of this Protocol, if the State permits State licensees to use Specially Regulated Fishing Methods in Walleye Lake Systems: (1) the Tribes may permit their members to use Specially Regulated Fishing Methods in Walleye Lake Systems subject to regulations that are no less restrictive than applicable State regulations; and (2) the Tribes and the State shall make appropriate adjustments, as may be necessary, to the provisions of this Protocol.

I. INTRODUCTION

1.1. **Use of Specially Regulated Fishing Methods in Walleye Lake Systems.** In accordance with Paragraphs 12.1 and 12.2 of the Decree, the Tribes may authorize their members to use Specially Regulated Fishing Methods in Walleye Lake Systems as provided in this Protocol, *provided* that the Tribes shall not authorize their members to use Impoundment Nets or Long Seines in tributaries to Walleye Lake Systems, except where the use of such gear is

permitted by State law or Paragraph 11.4 of the Decree. Short Seines are not subject to the provisions in this Protocol.

1.2. Tribal and State Management of Walleye Fisheries. The Tribes and State shall use this Protocol to manage their respective walleye fisheries in Walleye Lake Systems located within the 1836 Ceded Territory when use of Specially Regulated Fishing Methods is authorized. This Protocol is intended to provide the State and the Tribes with flexibility in managing their respective fisheries in Walleye Lake Systems and to provide a mechanism for modification as biological, environmental, and social circumstances might require.

1.3. Management Procedures for Specially Regulated Fishing Methods. The Tribes' authorization of their members' use of Specially Regulated Fishing Methods in a Walleye Lake System shall be subject to either the Threshold Level Procedures described in Section VI of this Protocol, or the Allocation-Based Procedures described in Section VII of this Protocol. The foremost objective for each of these management procedures is to maintain the total annual exploitation rate of Adult Walleyes in a Walleye Lake System by Tribal and State-licensed fishers at or below the agreed upon Total Allowable Annual Exploitation Rate, and to provide equivalent protections for other species of fish in a Walleye Lake System, as may be necessary, although the procedures differ in how this foremost objective is accomplished. Threshold Level Procedures require moderate management effort in accounting for harvest and Fishing activity and do not require population assessments. Allocation-Based Procedures require rigorous management by the State and the Tribes, including comprehensive monitoring of harvest and Fishing activity and population assessments.

1.4. Choice of Management Procedures; Fishing Effort Limitations under Threshold Level Procedures. The amount of Fishing Effort using Specially Regulated Fishing

Methods that the Tribes authorize in a particular Walleye Lake System shall determine whether Allocation-Based Procedures or Threshold Level Procedures shall be used in that Walleye Lake System. This Protocol establishes a Threshold Harvest Level applicable to the use of Specially Regulated Fishing Methods by Tribal members for each Walleye Lake System at a level that minimizes the risk that Tribal and State-licensed fishers will exceed the Total Allowable Annual Exploitation Rate for that Walleye Lake System. Unless one or more of the Tribes invokes Allocation-Based Procedures in a particular Walleye Lake System, the Tribes must limit their members' use of Specially Regulated Fishing Methods in that Walleye Lake System in accordance with Paragraph 6.5 of this Protocol. The Fishing Effort restrictions in Paragraph 6.5 of this Protocol are designed to ensure that the total harvest of Adult Walleyes with Specially Regulated Fishing Methods in a Walleye Lake System is below the Threshold Harvest Level for that Walleye Lake System.

1.5. Tribal Authorization of Fishing with Methods Other Than Specially Regulated Fishing Methods Not Limited. Except as provided in Section VIII of this Protocol, the Tribes' authorization of their members' use of fishing methods other than Specially Regulated Fishing Methods in Walleye Lake Systems is not limited by this Protocol, but Tribal members' harvests of Adult Walleye using such other methods shall be estimated and taken into account under Allocation-Based Procedures as set forth in Paragraphs 7.3 and 7.4(c) of this Protocol.

II. DEFINITIONS

As used in this Protocol, the terms defined in Section III (Definitions) of the Decree shall have the meanings ascribed to them in that Section. In addition, the following terms shall have the meanings ascribed to them in this Section II:

2.1. “Adult Walleye” means a walleye that is at least 15 inches in length or a walleye of any size for which sex can be determined by extruding gametes.

2.2. “Fishing Effort” means the amount of time spent Fishing using a specified type of Fishing gear or method.

2.3. “Total Allowable Annual Exploitation Rate” means the proportion of fish that can safely be harvested from a fish population during a one-year period.

2.4. “Natural Recruitment Walleye Lake System” means a Walleye Lake System in which the population of Adult Walleyes is comprised of 50% or more walleyes that are naturally produced or in which the population of Adult Walleyes is comprised of unknown percentages of naturally produced and stocked walleyes.

2.5. “Overfishing” means the harvest of fish of any species by State and/or Tribal fishers at an annual exploitation rate that is greater than the Total Allowable Annual Exploitation Rate for that species in a particular Lake System.

2.6. “Stocked Walleye Lake System” means a Walleye Lake System in which the population of Adult Walleyes is comprised of more than 50 percent walleyes that are stocked.

2.7. “Threshold Exploitation Level” means the maximum annual exploitation rate for Adult Walleyes using Specially Regulated Fishing Methods in a Walleye Lake System that is allowed under Threshold Level Procedures.

2.8. “Threshold Harvest Level” means the maximum annual number of Adult Walleyes that can be authorized for harvest by the Tribes with the use of Specially Regulated Fishing Methods in a Walleye Lake System under Threshold Level Procedures. The Threshold Harvest Level is equal to the estimated number of adult fish times the Threshold Exploitation Level.

III. WALLEYE LAKE SYSTEMS

Table 1 of this Protocol contains an initial list of Walleye Lake Systems in the 1836 Ceded Territory. The Tribes and the State shall add additional Lake Systems to the list of Walleye Lake Systems upon request of any Tribe or the State if those Lake Systems meet the definition of a Walleye Lake System in Paragraph 3.28 of the Decree. Similarly, the Tribes and the State shall remove Lake Systems from the list of Walleye Lake Systems upon request of any Tribe or the State if those Lake Systems no longer meet the definition of a Walleye Lake System in Paragraph 3.28 of the Decree. A request to add a Lake System to or remove a Lake System from the list of Walleye Lake Systems, including the supporting biological documentation, shall be made in writing and sent to the State and all Tribes by July 1 of the year preceding the year in which Lake System is to be added to or removed from the list of Walleye Lake Systems, or by such other date as may be mutually agreed upon by the State and the Tribes. The list of Walleye Lake Systems shall be updated with any changes by December 15 of the year the request was received.

IV. WALLEYE POPULATION ESTIMATES

Walleye population estimates are essential to the proper management of walleye harvest under this Protocol. Walleye population estimates shall be calculated according to the following methods.

4.1. **Walleye Population Regression Equations.** Except as provided in Paragraph 4.2, the Tribes and the State agree to use the following regression equations to estimate the Adult Walleye population in each Walleye Lake System. In addition, the Tribes and the State shall review these equations and any substitute equations every five years and may change them by mutual agreement.

Equation 1 -- Adult Population Estimate for a Natural Recruitment Walleye Lake System:

$$\ln(N) = 1.519 + 0.956 \times \ln(A)$$

Equation 2 -- Adult Population Estimate for a Stocked Walleye Lake System:

$$\ln(N) = 1.037 + 0.897 \times \ln(A)$$

where for both equations,

N = estimate of the Adult Walleye population, *i.e.*, the number of Adult Walleyes on the spawning grounds, and

A = surface area of the Walleye Lake System in acres, excluding tributaries.

The Tribes and the State shall collaborate in a project to develop criteria for determining the classification of Walleye Lake Systems (*i.e.*, Natural Recruitment Walleye Lake Systems versus Stocked Walleye Lake Systems, including sub-classifications if appropriate) and regression equations for each classification type that are specific to Michigan, based upon empirical estimates of population sizes of Adult Walleyes derived for Walleye Lake Systems in the 1836 Ceded Territory. The design of the project shall commence within two years of the entry of the Decree by the Court. Upon mutual agreement of the State and the Tribes that a Michigan regression equation or equations developed in this project provides more accurate estimates than the corresponding Equation 1 or Equation 2 above, the Tribes and the State shall use the Michigan regression equation or equations in place of the corresponding Equation 1 or Equation 2 above. If such mutual agreement is not attainable by the State and the Tribes, the State and the Tribes shall each select an independent expert to determine the accuracy of a Michigan regression equation or equations developed in this project. If the selected experts are unable to agree, they shall jointly select a third expert to resolve the matter. In addition, the Tribes and the State shall continue to update the Michigan regression equation or equations with any new

empirical estimates of population sizes of Adult Walleyes derived for Walleye Lake Systems in the 1836 Ceded Territory.

4.2. **Empirical Population Estimates of Adult Walleyes.** The Tribes and the State shall develop a mutually agreeable protocol for conducting walleye population assessments. An Adult Walleye population estimate derived from a walleye population assessment in a Walleye Lake System shall be used in place of the regression equations described in Paragraph 4.1. An empirical population estimate of Adult Walleyes for a Walleye Lake System shall be recorded and shall be used for five years, or until an empirical population estimate of Adult Walleyes is calculated from a new population assessment to replace it. After five years, an empirical population estimate of the Adult Walleyes for a Walleye Lake System shall be discarded and shall be replaced with the population estimate of Adult Walleyes using the applicable regression equation under Paragraph 4.1 of this Protocol.

4.3. **Alternative Methods.** Upon mutual agreement of the Tribes and the State, an alternative method for estimating the Adult Walleye population in a Walleye Lake System may be implemented. If the alternative method is not based on empirical population estimates from Walleye Lake Systems in Michigan, then the Tribes and the State shall determine and apply, as set forth in Paragraph 7.2 of this Protocol, mutually agreeable percentage reductions for the value of N in Equation 3, when Fishing under Allocation-Based Procedures in Walleye Lake Systems of 1,000 surface acres or more (excluding tributaries).

4.4. **Initial Estimates.** Table 1 of this Protocol sets forth the initial Adult Walleye population estimate in each Walleye Lake System listed in Table 1, using the methodologies set forth in Paragraphs 4.1 and 4.2 of this Protocol and available information on the surface area of Walleye Lake Systems (excluding tributaries) and the source of Adult Walleye recruitment in

such Systems. The Tribes and the State shall revise the Adult Walleye population estimates in Table 1 in accordance with Paragraphs 4.2 and 4.3 of this Protocol and/or on the basis of additional information on the surface area of Walleye Lake Systems (excluding tributaries) or the source of Adult Walleye recruitment in such Systems, as appropriate. A request to revise an Adult Walleye population estimate for a Walleye Lake System, including the supporting information, shall be made in writing and sent to the State and all Tribes by July 1 of the year preceding the year in which the revised estimate is to take effect or by such other date as may be mutually agreed upon by the Tribes and the State. The Adult Walleye population estimate shall be revised by December 15 of the year the request was received.

V. TOTAL ALLOWABLE ANNUAL EXPLOITATION RATES AND TOTAL HARVEST LEVELS

The Tribes and State shall manage their respective fisheries in accordance with this Protocol to prevent the combined harvest by Tribal and State-licensed fishers from exceeding the Total Allowable Annual Exploitation Rates and Total Harvest Levels for Adult Walleyes in Walleye Lake Systems.

5.1. **Total Allowable Annual Exploitation Rates.** The Total Allowable Annual Exploitation Rate for Adult Walleyes in each Walleye Lake System shall be 35% of the estimated Adult Walleye population in that Walleye Lake System, *provided* that the Total Allowable Annual Exploitation Rate for Adult Walleyes is subject to change on any Walleye Lake System by mutual agreement of the Tribes and the State. A request to change the Total Allowable Annual Exploitation Rate for Adult Walleyes in a Walleye Lake System, including the supporting biological documentation and duration of the proposed change, shall be submitted in writing to all Tribes and the State by July 1 of the year preceding the effective date of the proposed change, or by such other date as may be mutually agreed upon by the State and the

Tribes, and shall be reviewed by State and Tribal biologists to ensure that the change shall protect the walleye population in that Walleye Lake System and that the change shall comply with the objectives and rules of this Protocol. The Tribes and the State shall declare whether or not they agree with a requested change by December 15 of the year the request was received. If the Tribes and the State agree to change the Total Allowable Annual Exploitation Rate for a Walleye Lake System, then the new Total Allowable Annual Exploitation Rate for that Walleye Lake System shall be recorded and used in future management for the agreed upon duration or until changed by mutual agreement of the Tribes and the State under this Paragraph 5.1.

5.2. **Total Harvest Levels.** The Total Harvest Level for Adult Walleyes in any Walleye Lake System shall be calculated as shown in Equation 3.

Equation 3 -- Total Harvest Level for Adult Walleyes:

$$H_{tot} = N \times E_{tot}$$

where,

H_{tot} = Total Harvest Level for Adult Walleyes;

N = the estimated number of Adult Walleyes in the Walleye Lake System determined in accordance with Section IV of this Protocol; and

E_{tot} = Total Allowable Annual Exploitation Rate as defined in Paragraph 5.1 of this Protocol.

VI. THRESHOLD LEVEL PROCEDURES FOR WALLEYE LAKE SYSTEMS

6.1. **Use of Threshold Level Procedures.** Unless one or more of the Tribes invokes Allocation-Based Procedures for a particular Walleye Lake System, the Threshold Level Procedures set forth in this Section VI shall be used if one or more Tribes authorizes its members to use Specially Regulated Fishing Methods in that Walleye Lake System.

6.2. Objectives of Threshold Level Procedures; Methods for Achieving

Objectives. As set forth above, the foremost objective of Threshold Level Procedures is to maintain the total annual exploitation rate of Adult Walleyes by Tribal and State-licensed fishers in a Walleye Lake System at or below the Total Allowable Annual Exploitation Rate for that Walleye Lake System. A second objective is to maintain the total annual exploitation rates of other fish species in Walleye Lakes Systems at acceptable levels. A third objective of Threshold Level Procedures is to ensure that Tribal members have an opportunity to use Specially Regulated Fishing Methods in a Walleye Lake System to harvest Adult Walleyes and other fish species in that Walleye Lake System without requiring implementation of the more rigorous management practices required under Allocation-Based Procedures. These objectives are accomplished by: (1) setting a Threshold Exploitation Level with a corresponding Threshold Harvest Level in each Walleye Lake System, as set forth in Paragraphs 6.3 and 6.4 of this Protocol; (2) implementing a permit system that (a) controls harvest by limiting annual Fishing Effort by Tribal members using Specially Regulated Fishing Methods on each Walleye Lake System, such that the number of Adult Walleyes allowed for harvest using Specially Regulated Fishing Methods shall not exceed the Threshold Harvest Level for Adult Walleyes and (b) limits the use of Impoundment Nets and Long Seines to protect species other than walleye, both as set forth in Paragraph 6.5 of this Protocol; (3) applying daily bag limits, possession limits, and size limits, as set forth in Paragraph 11.3 of the Decree and Paragraph 6.5 and Section VIII of this Protocol; and (4) utilizing appropriate State management of State-licensed fishers to limit exploitation rates on Adult Walleyes by such fishers to the difference between the Total Allowable Annual Exploitation Rate for Adult Walleyes and the Threshold Exploitation Level, in the event that, on the basis of available information, the combined exploitation rates by State-

licensed fishers and Tribal fishers are expected to exceed the Total Allowable Annual Exploitation Rate.

6.3. Threshold Exploitation Levels. Except as provided below, the Threshold Exploitation Level for each Walleye Lake System, which shall be used to limit the annual Fishing Effort by Tribal members using Specially Regulated Fishing Methods, is:

(a) Ten percent (10%) of the estimated Adult Walleye population in Walleye Lake Systems of 1,000 surface acres or more, excluding tributaries, *provided* that, if the estimated Adult Walleyes population is *not* based on a Michigan regression equation under Paragraph 4.1 of this Protocol, an empirical population estimate under Paragraph 4.2 of this Protocol, or an alternative method under Paragraph 4.3 of this Protocol, the Threshold Exploitation Level for such lakes shall be six percent (6%) of the estimated Adult Walleye population in 2008, eight percent (8%) of the estimated Adult Walleye population in 2009, and ten percent (10%) of the estimated Adult Walleye population in 2010 and thereafter, and

(b) Five percent (5%) of the estimated Adult Walleye population in Walleye Lake Systems of less than 1,000 surface acres, excluding tributaries, in all years.

The Threshold Exploitation Level in a Walleye Lake System can be adjusted up or down by mutual agreement between the State and the Tribes. Requests for such an adjustment shall include the duration of the proposed change and the supporting biological documentation that demonstrates that the proposed change to the Threshold Exploitation Level will not result in a total annual exploitation rate that exceeds the Total Allowable Annual Exploitation Rate for Adult Walleyes. If a Tribe elects to fund a creel survey to obtain such information, the State shall cooperate in conducting the study. Requests to adjust a Threshold Exploitation Level shall be submitted in writing to the State and all Tribes by July 1 of the year preceding the effective

date of the proposed adjustment, or by such other date as may be mutually agreed upon by the State and the Tribes. Requests for an adjustment to a Threshold Exploitation Level shall be reviewed by State and Tribal biologists to ensure that any adjustment will protect the walleye population and populations of other fish species in that Walleye Lake System and complies with the objectives and rules of this Protocol. The Tribes and the State shall declare whether or not they agree with a requested adjustment to the Threshold Exploitation Level for a Walleye Lake System by December 15 of the year the request was received. If the Tribes and the State agree to adjust a Threshold Exploitation Level, the new level shall be recorded and shall be used in future management for the agreed-upon duration or until changed by the State and the Tribes under this Paragraph.

6.4. **Threshold Harvest Levels.** In order to apply the Fishing Effort limitations set forth in Paragraph 6.5 of this Protocol, the Threshold Exploitation Level for a Walleye Lake System shall be converted to a Threshold Harvest Level for that Walleye Lake System (*i.e.*, the number of Adult Walleyes that the Tribes can authorize their members to harvest using Specially Regulated Fishing Methods in that Walleye Lake System under Threshold Level Procedures). The calculation of the Threshold Harvest Level for a Walleye Lake System is shown in Equation 4.

Equation 4 -- Threshold Harvest Level:

$$H_{thl} = N \times E_{thl}$$

where,

H_{thl} = Threshold Harvest Level;

N = the estimated number of Adult Walleye in the Walleye Lake System, as determined in accordance with Section IV of this Protocol, and

E_{thl} = the Threshold Exploitation Level for that Walleye Lake System, as determined in accordance with Paragraph 6.3.

6.5. Fishing Effort Limitations under Threshold Level Procedures.

(a) The Tribes shall limit their members' Fishing Effort for walleyes with Specially Regulated Fishing Methods in each Walleye Lake System subject to Threshold Level Procedures so that the number of Adult Walleyes allowed for harvest by Tribal members using such methods does not exceed the Threshold Harvest Level established for that Walleye Lake System under Paragraph 6.4. To achieve this objective, the Tribes shall require their members to obtain a Tribal permit for the use of Specially Regulated Fishing Methods that is specific to a Walleye Lake System and that specifies the starting date and time of each 24-hour period during which the permit is valid and a daily walleye bag limit. The number of walleyes allowed for harvest under each permit issued in accordance with this Subparagraph 6.5(a) shall equal the number of 24-hour periods for which the permit is valid times the daily walleye bag limit specified in the permit. The Tribes shall maintain a running tally of the number of walleyes allowed for harvest under such permits in each Walleye Lake System and, when the number of walleyes allowed for harvest under all such permits for a particular Walleye Lake System reaches the Threshold Harvest Level for that Walleye Lake System, the Tribes shall cease issuing permits for the use of Specially Regulated Fishing Methods to harvest walleyes in that Walleye Lake System.

(b) In addition to the limitation on the issuance of permits in Subparagraph 6.5(a), the Tribes shall limit the use of Impoundment Nets and Long Seines in each Walleye Lake System as provided in this Subparagraph 6.5(b). The Tribes shall limit each permit for the use of Impoundment Nets or Long Seines to the use of a single Impoundment Net

or a single Long Seine during one or more 24-hour periods. The total number of such 24-hour periods in all such permits in a particular Walleye Lake System shall be limited as follows:

i. No more than three (3) 24-hour periods per 100 surface acres per year in Walleye Lake Systems of 1,000 surface acres or more, excluding tributaries, rounded to the nearest whole number; and

ii. No more than one and one-half (1.5) 24-hour periods per 100 surface acres per year in Walleye Lake Systems of less than 1,000 surface acres, excluding tributaries, and rounded to the nearest whole number.

The Tribes shall maintain a running tally of the number of 24-hour periods in such permits for each Walleye Lake System and, when the number of such 24-hour periods under all such permits for a particular Walleye Lake System reaches the limit for that Walleye Lake System, the Tribes shall cease issuing permits for the use of Impoundment Nets or Long Seines for that Walleye Lake System.

(c) The provisions in Subparagraph 6.5(b) are intended to limit the amount of Fishing Effort with Impoundment Nets and Long Seines in order to protect species of fish other than walleyes. The Tribes and the State may by mutual agreement provide for an alternative mechanism to protect species of fish other than walleye in lieu of those provisions. A proposal to adopt an alternative mechanism to protect species of fish other than walleyes in a particular Walleye Lake System or Systems, including the supporting biological documentation and proposed duration of the alternative mechanism, shall be made in writing and sent to the State and all Tribes by July 1 of the year preceding the year in which the alternative mechanism is to be implemented, or by such other date as may be mutually agreed upon by the State and the Tribes. The Tribes and the State shall declare whether they agree to implement the proposal by